

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**GMAC, INC. and NUVELL CREDIT
COMPANY, LLC**

Petitioner

VS

**BTA DOCKET NOS.
6998, 6999, 7000, 7001
7012, 7049, 7220, and
7221**

**SECRETARY, DEPARTMENT OF
REVENUE, STATE OF LOUISIANA**

Respondent

JUDGMENT

These consolidated cases came up for hearing on October 8, 2013.¹

Appearing for the parties were: Christopher J. Dicharry, Linda S. Akchin, Jason R. Brown, Daniel H. Schlueter and Jeffery N. Sharkey, attorneys for Petitioners GMAC Inc. and Nuvel Credit Company LLC (“Taxpayers”), and Debra Morris, attorney for the Secretary, Louisiana Department of Revenue (the “Secretary”).

On October 8, 2014, the Board issued an Order With Written Reasons resolving the issues in dispute pertaining to both the Secretary’s assessments and Taxpayers’ requests for refunds. These reasons are incorporated hereby as the Written Reasons for this Judgment. That Order required the parties to submit a proposed judgment conforming to the Written Reasons that contain the proper dollar amounts resulting from the changes provided for in the

¹ After numerous status conferences the parties initially agreed to a March 12, 2013 trial date, this was reflected in a Scheduling Order and Hearing Notice transmitted to them in November of 2012. The parties submitted a Joint Motion to Continue, and the trial on the merits was re-set for October 8, 2013. The taxpayer filed a motion for Sanctions due to the Secretary’s lack of compliance with the pre-trial Scheduling Order. The Board granted this Motion in part and denied it in part by written Order and Written Reasons on October 22, 2013. The Secretary sought supervisory writs--which were ultimately denied. On July 7, 2014, the Board desiring that the issue of prescription be fully vetted, Ordered the parties to produce all prescription waivers—not just the latest waivers. After review of these waivers, the Board then proceeded to render its decision in the case.

Order with Written Reasons. The Board set oral argument on the proposed judgments in an effort to get sufficient information from the Secretary on its position, this argument was ultimately continued to March 12, 2015.

The Taxpayer submitted copious evidence in support of its calculation. The Secretary did not submit the calculated dollar amounts in regard to the Taxpayers' request for refunds, and did not submit any evidence in support of its position or in opposition to the taxpayers' proposed judgment.

The reason the Secretary gave for this omission was that, in the Secretary's opinion, the Secretary was prohibited from granting the requested refund under the provisions of La. R.S. 47:1621(F). This defense was not urged prior to or at the trial of this matter. Although it is too late to urge it at the post-trial hearing set solely to clarify the dollar amounts for Judgment, had the Secretary urged that defense timely, it would have been to no avail. The facts of this case are inapposite to the application of La. R.S. 47:1621(F) the basis for the refund is not based on a mistake of law by the Secretary.²

Based on the record before us, the Board finds that the Taxpayer GMAC, Inc. ("GMAC") overpaid its corporation franchise taxes for the taxable years 1998 – 2006 in the amount of \$5,485,893. The Board finds that GMAC overpaid its corporation income taxes for taxable years 2000-2003 in the amount of \$1,989,730.

² Even if §1621(F) applied, the Board has ruled that it is not a restriction on a refund action before the Board. *See e.g., General Electric Capital Services, Inc. V. Barfield*, 2013 WL 3465284, p. 3 (La. Bd. Tax. App. 6/19/13), *citing Tin, Inc. v. Washington Parish Sheriff's Office* 2012-2056, p. 7 (La. 2013) 112 So.3d 197.

Based on the record before us, the Board finds that Taxpayer Nuvell Credit Company LLC (“Nuvell”) overpaid its corporation franchise taxes for taxable years 2004-2006 in the amount of \$486,474.

IT IS ORDERED, ADJUDGED AND DECREED that the Secretary shall refund GMAC, Inc. the amount of \$5,485,893 from current collections of the corporate franchise tax, plus the applicable interest as required by La. R.S. 47:1624.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Secretary shall refund GMAC, Inc. the amount of \$1,989,730 from current collections of the corporate income tax, plus the applicable interest as required by La. R.S. 47:1624.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Secretary shall refund Nuvell Credit Company, LLC the amount of \$486,474 from current collections of the corporate franchise tax, plus interest as required by La. R.S. 47:1624.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is a final and appealable judgment within the meaning of La. R.S. 47:1434, and all parties have reserved their rights to appeal the judgment.

JUDGMENT READ, RENDERED AND SIGNED at Baton Rouge, Louisiana this 15th day of April, 2015.

FOR THE BOARD:



**JUDGE TONY GRAPHIA, (RET.),
CHAIRMAN**



STATE OF LOUISIANA
BOARD OF TAX APPEALS

COPY

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JUDGE TONY GRAPHIA (ret.)
Chairman
CADE R. COLE
Vice-Chair
KERNAN A. HAND, JR

RULE 1: Review of Decisions or Judgment of the Board

A judicial review of a decision or judgment of the Board shall be in accordance with La. R.S. 47:1434, as revised by Act 198, effective July 1, 2014.

Any appeal shall be taken in accordance with the law and any applicable Court of Appeal rules.

There is no suspension or interruption of the time for appeal by a party filing a motion for new trial.



STATE OF LOUISIANA
BOARD OF TAX APPEALS

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JUDGE TONY GRAPHIA (RET.)
Chairman

CADE R. COLE
Vice-Chairman

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PUBLIC NOTICE

THE LOUISIANA BOARD OF TAX APPEALS IS MOVING ITS OFFICES TO THE
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